

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs January 28, 2009

STATE OF TENNESSEE v. RONALD CURTIS FLOYD

Appeal from the Circuit Court for Blount County
No. C-16949 Michael H. Meares, Judge

No. E2008-00970-CCA-R3-CD - Filed July 22, 2009

The defendant, Ronald Curtis Floyd, entered a guilty plea in the Blount County Circuit Court to promoting the manufacture of methamphetamine, a Class D felony, and received a six-year sentence as a Range II, multiple offender, to be served on probation following the service of one hundred twenty days in jail. A revocation warrant issued following the defendant's arrest for promoting the manufacture of methamphetamine and driving on a suspended license. Following a revocation hearing, the trial court found by a preponderance of the evidence that the defendant had violated the conditions of his probation, revoked his probation, and ordered the defendant to serve his sentence in the custody of the Department of Correction. In this appeal as of right, the defendant contends that the trial court abused its discretion in revoking his probation. Following our review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed.

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR. and NORMA MCGEE OGLE, JJ., joined.

Mack Garner, District Public Defender (at trial); and J. Liddell Kirk (on appeal), attorneys for appellant, Ronald Curtis Floyd.

Robert E. Cooper, Jr., Attorney General and Reporter; Clarence E. Lutz, Assistant Attorney General; Mike Flynn, District Attorney General; and Kathy Aslinger, Assistant District Attorney General, attorneys for appellee, State of Tennessee.

OPINION

Debbie Ward, a Wal-Mart pharmacist in Blount County, testified that on February 8, 2008, Jordan Tennell came to the pharmacy to purchase twelve-hour or twenty-four hour Sudafed.¹ After confirming that the identification, which happened to have a Crossville address, matched the individual presenting it, Ms. Ward telephoned Joanie Seratt of the Fifth Judicial Drug Task Force to alert them regarding the request. While on the telephone, another individual, Dennis Wyatt, presented his identification, also with a Crossville address. Wyatt was unable to purchase any pseudophedrine because the clerk thought the pharmacy was out of the product requested; however, Tennell did purchase the Sudafed from the pharmacy that day. Ms. Ward admitted that the defendant did not enter the store to purchase any products.

Joanie Seratt testified that she received the telephone call from Ms. Ward and that both Tennell and Wyatt sounded familiar to her. She and another investigator conducted surveillance in the parking lot, waiting for the men to exit Wal-Mart. She and her partner recognized Wyatt as someone who had been charged previously with manufacturing methamphetamine. Both men went to a vehicle where the defendant was waiting in the driver's seat. Officers approached the vehicle and upon running the defendant's identification, they learned that his driver's license had been suspended. A search of the vehicle recovered an empty box of Sudafed, loose underneath the back seat; a marijuana cigarette; and pH test strips, a shut-off valve, a cut water hose, and an empty gas can – all items used in the manufacture of methamphetamine. Although Tennell was the owner of the vehicle, the defendant appeared to have been driving.

A trial court may revoke a sentence of probation upon finding by a preponderance of the evidence that the defendant has violated the conditions of his release. Tenn. Code Ann. § 40-35-311(e). A trial court is not required to find that a violation of probation occurred beyond a reasonable doubt. Stamps v. State, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). The evidence need only show that the court has exercised conscientious judgment in making the decision and has not acted arbitrarily. Id. Our standard of review on appeal is whether the trial court abused its discretion in finding that a violation of probation occurred. State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). In order to conclude that the trial court abused its discretion, there must be no substantial evidence to support the determination of the trial court. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). Such a finding “reflects that the trial court’s logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved in a particular case.” State v. Shaffer, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting State v. Moore, 6 S.W.3d 235, 242 (Tenn. 1999)).

The defendant concedes at trial and on appeal that he was driving on a suspended license. However, he argues that there is not sufficient proof that he was promoting the manufacture of methamphetamine to justify the trial court’s revocation of probation and that the trial court abused its discretion in ordering him to serve his sentence. At the revocation hearing, the defendant asked the trial court to impose an additional ten day sentence for the violation of probation and return him

¹ Ms. Ward testified that requests for twelve-hour and twenty-four hour Sudafed “throws a red flag [because] . . . it has a large amount of product in it” necessary for manufacturing methamphetamine.

to probation. The trial court found by a preponderance of the evidence that the defendant was “aiding and abetting in an attempt to purchase pseudoephedrine . . . [and] driving on a suspended license” and ordered the defendant to serve the balance of his sentence in custody. We conclude that the trial court exercised conscientious judgment and did not act arbitrarily in light of the proof presented at the revocation hearing. Therefore, the judgment of the trial court is affirmed.

CONCLUSION

In consideration of the foregoing, the judgment of the trial court is affirmed.

D. KELLY THOMAS, JR., JUDGE